IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10275 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GRASIM INDUSTRIES LIMITED

Versus

SALES TAX OFFICER

Appearance:

MR RD PATHAK FOR MR NAYAN A SHETH for Petitioners

MR RC KODEKAR ASST. GOVT. PLEADER for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: /11/2000

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The Petitioner Company is engaged in the business of export of castor oil. It feels aggrieved by the order dated 7-8-2000 (Annexure A/7) issued by the Sales Tax Officer, Flying Squad, Unit-3, Ahmedabad (respondent No. 1) whereby the delivery of cargo stored with the Handling Agent of the Company, namely, Naranbhai P. Patel (E) Private Limited at Kandla Port, has been ordered to be stopped for shipment.

#. After approaching this Hon'ble Court and during the pendency of this Petition, it is now reported that the cargo has been allowed to be delivered and it has been cleared for shipment. The grievance of the petitioner, however, remains in view of the impugned general instructions (Annexure A/14) issued on 26-9-2000 by the above mentioned Sales Tax Officer to the Handling Agent of the Company above named, directing him not to release the stored quantity of castor oil for export, to the petitioner and other parties, without instructions from the Sales Tax Authority who has issued the general instructions.

#. The Sales Tax Officer (respondent No.1) has filed a reply affidavit to justify the impugned action and states that the same has been taken in exercise of powers under Section 59(5A) of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as `the Act'). The relevant part of the impugned order dated 7-8-2000 (Annexure A/7) issued by the Sales Tax Officer to the Handling Agent of the Petitioner Company at Kandla Port reads as under:-

> "On verifying the incoming goods of the terminal range, I find it necessary to further verify the account books of the following buyers and sellers of the goods. Therefore, I, K.H. Patel, the Sales Tax Officer of Flying Squad Unit in the Office of the Commissioner of Sales Tax, Gujarat State, Ahmedabad order to stop the delivery of the said goods in the storage terminal in pursuance of the powers under Section 59(5A) of the Gujarat Sales Tax Act, 1969, delegated to me by the Commissioner of Sales Tax, Gujarat State, Ahmedabad. I order that the goods of the storage terminal are to be kept by the company at its risk and cost and I also order that without the written permission of the undersigned officer or in his presence, delivery should be given.
>
> In addition, it is also ordered that without the permission of this office, in no circumstances, these goods can be rebooked."

#. The relevant part of the impugned instructions stopping delivery of stored quantity of castor oil for export issued on 26-9-2000 (Annexure A/14) in its relevant part reads:-

"Moreover, by Letter No. 2 mentioned in the reference, you have been specifically informed that whatever quantity of castor oil for export belonging to any of the exporters as well as parties other than the above exporters, may not be released without any instructions. This instruction should invariably be followed and the castor oil belonging to any exporters may not be released without the order of release of stop delivery from this office. This order has been issued to you in pursuance of the Sections mentioned at Sr. No. 4 in the reference."

#. The above impugned order and the impugned general instructions are purported to have been issued by the Sales Tax Officer in exercise of powers under Section 59. Subsections of the said Section relevant for the purpose read as under:-

"59. Production and inspection of accounts and documents and search of premises -

(1) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) If the Commissioner has reason to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may for reasons be recorded in writing, seize such accounts, registers, document of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary, in connection with any proceeding under this Act or for a prosecution.

(5)For the purposes of sub-section (2) or sub-section (4), the Commissioner may enter and search any place of business of any dealer, or any other place where the Commissioner has reason to believe that the dealer keeps or is for the time being keeping any accounts, registers or documents of his business or stocks of goods relating to his business and make a note or an inventory of any articles or things found in the course of any search which in his opinion will be useful for, or relevant to any proceeding under this Act, or for a prosecution.

(5A) Where -

(a) a carrier or bailee or any person to whom goods were delivered for transport has kept the said goods in any vehicle, vessel or place; and

(b) the Commissioner has reason to believe that tax on such goods is or is likely to be evaded,

the Commissioner may stop the vehicle or the vessel carrying such goods and enter and search the vehicle, vessel or place and inspect the goods and records relating to such goods and elicit such information from the carrier, bailee or any person as is relevant.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches shall apply, so far as may be, to a search made under subsections (5) and (5A).

Sub-section (5A) was inserted from 1-4-1999"

(Underlining by the Court for supplying emphasis)

#. Learned counsel Shri Pathak appearing for the petitioner questions the legality of the impugned action of the Sales Tax Officer. He submits that there is no sales tax leviable on export of castor oil. There were no circumstances or facts available with the concerned Officer to form a bonafide opinion that there was any likelihood of evasion of sales tax at the hands of the petitioner Company. It is further contended that without any justifiable reasons, the delivery of goods for export was stopped at the storage terminal without any intimation and opportunity of hearing to the petitioner as an exporter. It is contended that the impugned action is per se illegal and arbitrary which has resulted into great monetary loss and inconvenience to the petitioner as exporter. The impugned action is likely to land the petitioner in various financial complications and claims by the foreign buyers.

#. The learned counsel for the petitioner states that the Company is aggrieved by the general instructions issued by the Sales Tax Authorities vide its communication dated 26-9-2000 (Annexure A/14) whereby no quantity of castor oil has been allowed to be delivered for export to any of the parties without prior intimation or instruction from the Sales Tax Authorities.

#. Respondent No.1, Sales Tax Officer, Flying Squad, Unit-3, Ahmedabad has filed a reply affidavit to support his action. In the reply affidavit it has not been disputed that no tax is leviable on the sales which are termed as export sales. From the reply affidavit it appears that the Sales Tax Authority wanted to make verification and investigation to find out as to whether there has been any evasion of purchase tax on castor seeds by the oil millers from whom the petitioner Company purchased the oil for export. In the reply affidavit it has further been stated that the action of stopping delivery of the goods for export under Section 59(5A) of the Act was taken "for the purpose of verifying the dealers of the castor oil and the purchase tax on castor seeds paid by them or not"

#. The action of stopping delivery of goods for export is one having serious financial consequences so far as the exporter is concerned. The power conferred on the Sales Tax Authorities under Section 59 of the Act is of extraordinary nature and has been so conferred for the purpose of preventing evasion of sales tax on taxable goods. The action under Section 59 of stopping delivery of goods for verification and inspection is permitted against the party likely to evade the tax. The safeguards provided in the Section are that the Commissioner or his delegate should have reasonable grounds to believe that there is likelihood of evasion of tax or attempt to evade tax by the dealer against whom the action of stopping delivery is proposed. The Section provides further safeguard to the person proceeded against by requiring the Authority to record reasons in writing for taking such drastic action of stopping delivery of goods. Since the action is directed against a party or a dealer who is likely to evade or attempting to evade tax, it is necessary to read into the provision the requirement of observance of principles of natural justice. It is necessary for the Authority taking action under the Section to give notice to the party directly affected by the action and to grant him opportunity of hearing for continuing the action or dropping the same. We find that there are several legal infirmities in the action taken by the Sales Tax Authorities. It is not disputed by the Sales Tax Authorities in their reply affidavit that the petitioner Company is merely an exporter of castor oil and on such transaction of export, no sales tax is leviable. The petitioner Company, therefore, is not a `dealer' within the meaning of the Act. There are no allegations in the reply affidavit or in the impugned communication that the petitioner Company

`has evaded' or `was attempting to evade' payment of any tax. What has been stated in the reply affidavit is that it was necessary to stop the delivery of castor oil to find out whether there has been any evasion of purchase tax on castor seeds by the oil millers. For the above lawful purpose, the Sales Tax Authorities could have proceeded against the sellers of castor seeds or the oil millers. No action was warranted or could be taken against the exporter of the castor oil. It may also be stated that action permissible under Section 59 of stopping delivery of goods for inspection and verification is a power not to be exercised lightly and on unsubstantial grounds, because the action contemplated has serious pecuniary consequences on the party against whom the action is taken. Without any cogent and substantial ground which could lead to formation of a bonafide belief by the Tax Authority of evasion or likely evasion of tax, a drastic action of stopping delivery of goods could not have been taken. In the instant case, as has been stated by the petitioner, all the quantity of castor oil was purchased under bills and documents from known parties and the fact could have been verified from the purchase and sale documents and the documents pertaining to the export. It was not necessary for verifying the purchase of castor seeds by oil millers to stop delivery of the quantity of castor oil stored at the terminal point in the Port. Such action against the exporter was bound to result in demurrage charges and claims for breach of contract by the foreign buyers. The provisions of Section 59(4) expressly require the Commissioner or his delegate to first form an opinion or belief that "any dealer has evaded or is attempting to evade payment of any tax". The latter part of subsection (4) of Section 59 requires `recording of reasons in writing' for taking such action. As has been mentioned by us above, the petitioner is not a `dealer' and admittedly so. As per the stand of the Department there was no evasion or likelihood of evasion of tax by the petitioner as exporter. No action, therefore, was warranted and could be taken for stopping delivery of goods for export to the petitioner Company.

##. The impugned action also seems to us to be in flagrant breach of principles of natural justice. Simultaneously, with the issuance of the impugned order (Annexure A/7) dated 7-8-2000 to the Handling Agent of the petitioner Company at Kandla, no intimation of the impugned order was sent to the petitioner, who was the exporter of the goods. It is only when delivery of goods was stopped that the petitioner Company on his own addressed several letters to the authorities objecting to

the procedure followed and action taken. Since the action under Section 59(4) is to be directed against a dealer, it is necessary that the dealer against whom the action is taken has to be given a notice and an opportunity of hearing. In the instant case, only an intimation was sent to the Handling agent of the petitioner Company but no intimation for grant of opportunity of hearing was sent to the petitioner Company.

##. The impugned order (Annexure A/7) dated 7-8-2000, therefore, cannot be sustained and is to be quashed.

##. As has been stated above, since the delivery of castor oil which was stopped under the impugned order (Annexure A/7) has now been released, the grievance so far as the said order is concerned no longer survives. The petitioner, however, is aggrieved by the impugned general instructions issued on 26-9-2000 (Annexure A/14) addressed to the Handling Agent or Warehouse In-Charge at the Kandla Port directing him not to make any delivery of consignment of castor oil for export without previous intimation and instructions from the Sales Tax Authorities.

##. As has been pointed above, the provisions of Section 59(4) require the Commissioner or his delegate to first form a reasonable opinion about `evasion or likely evasion of tax' and then take action, after recording reasons in writing, against a particular dealer or dealers. The provisions of Section 59 do not contemplate issuance of any order or direction of a general nature applicable to all kinds of dealers such as exporters in castor oil as is the case herein. The impugned part of the circular or instructions directing the Handling Agent not to deliver any goods for export without prior instructions and intimation to the Tax Authorities is per se dehors the power of the Sales Tax Authorities under Section 59(4) of the Act. Such general instructions being not in accordance with Section 59(4), therefore, cannot be sustained.

##. For the reasons aforesaid, the Petition succeeds and is hereby allowed. The impugned order (Annexure A/7) dated 7-8-2000 and the impugned general instructions (Annexure A/14) dated 26-9-2000 issued by the Sales Tax Officer, Flying Squad, Unit-3, Ahmedabad (respondent No.1) are hereby quashed.

Rule is made absolute.

Under the circumstances, the petitioner shall also be entitled to costs of this petition quantified to Rs.2000/-.

(D.M. DHARMADHIKARI, C.J.)

(M.S. SHAH, J)

[sndevu]